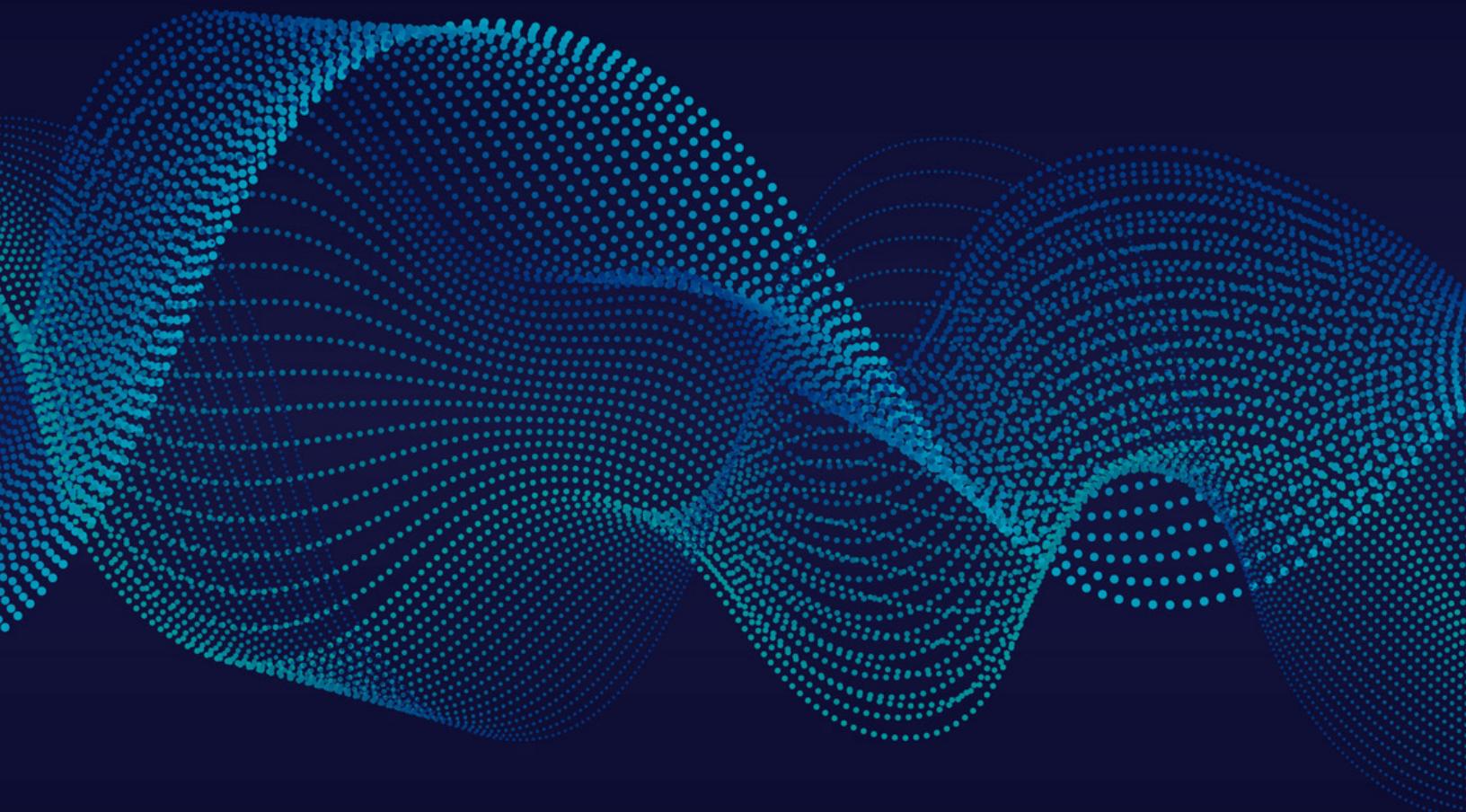


# UNHEARD VOICES: THE CASE FOR IMPROVING HIGHER EDUCATION COMPLAINT SYSTEMS



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## INTRODUCTION: THE IMPORTANCE OF STUDENT COMPLAINTS

While higher education comes with many rewards, it can also present risks for students through high costs and the threat of predatory institutions. Within the framework of the “program integrity triad” as articulated in the federal Higher Education Act, the task of higher education oversight is delegated among three parties: the U.S. Department of Education (“Department”) certifies that the institutions are eligible for taxpayer-financed financial aid and oversees their administration of those funds, accrediting agencies bear the responsibility of evaluating the academic quality of the colleges they accredit, and the states are tasked with consumer protection.<sup>1</sup> Student complaints are a key component of state consumer protection efforts, and the states’ role in resolving complaints is formalized in the federal state authorization regulations.

In the world of higher education, complaints are an essential tool not only to resolve student problems, but also to identify patterns of widespread misconduct and take action to prevent ongoing harm to students and taxpayers. Complaint data can be an invaluable indicator of problematic or predatory practices at institutions, even before other indicia have surfaced. However, the current complaint landscape is complex and not well designed to serve student needs. Students often do not know that they have the right to file complaints, and struggle to navigate the overlapping complaint systems at their institutions and at different agencies. And even within a given state, this overlap results in inefficiencies in oversight that make it harder to protect students from harm. In addition to these consumer protection-related complaint systems, there are also separate complaint systems for Title IX and civil rights violations, as well as Borrower Defense and Student Tuition Recovery Fund portals where students can submit claims for relief.

Layered on top of this is the added complexity of interstate online education. Online education has become a permanent fixture in the higher education landscape, and there are complications inherent to resolving student complaints across state lines – especially when the institution has no physical presence in the student’s state, as is more and more often the case. This is especially so in the wake of the COVID-19 pandemic, at a time when so many students who would typically be physically present on campus have enrolled online across state boundaries due to the pandemic, and the question of where to file a complaint and how to resolve it becomes even more confusing for students, institutions, and state governments.

Given the importance of complaints both in protecting students and as a feedback mechanism for identifying and addressing misconduct, it is critical to examine existing complaint systems and assess how they can be improved. This report provides an overview of the current higher education complaint system landscape, identifies best practices and principles that should govern complaint systems, and makes recommendations about how higher education and distance education complaint systems could be strengthened moving forward.

## STATE-LEVEL COMPLAINT SYSTEMS

State-level complaint systems serve as students’ primary method for seeking relief when they have been harmed by their institution. The vast majority of students lack the resources or legal acumen to seek relief through the courts, and arbitration agreements are commonly used by for-profit schools to further reduce students’ legal options.<sup>2</sup> Given these obstacles, government complaint portals are an important avenue for harmed students to assert complaints and seek relief.

The federal regulations on state authorization (state authorization rule) require that there be a complaint procedure in place in every state to ensure that students’ concerns about their institutions are reviewed and addressed under the law. The rule is very clear that states must have “a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws.”<sup>3</sup> However, although these state complaint systems are required by federal law, there are very few specific requirements for how complaint systems are established or managed.

For example, some state complaint systems – including the Arizona State Board for Private Postsecondary Education, the Louisiana Board of Regents, and the Michigan Post-Secondary Schools unit – as well as the National Council for State Authorization Reciprocity Agreements (NC-SARA) – mandate that students seek resolution from the institutions first and review appeals only after the student has exhausted all institutional options.<sup>4</sup> The state authorization rules finalized in 2010 made clear that self-reporting complaint systems were insufficient to satisfy federal regulation,<sup>5</sup> but the subsequent versions of the rule have been silent on this issue. Such policies may give institutions undue power to resolve complaints filed against themselves, despite the obvious conflict of interest. Rather than utilizing complaints as an opportunity to independently review whether institutions are following state and federal laws, policies like these have a dampening impact on student complaints due to student fears of retaliation.<sup>6</sup> Such self-regulatory environments defeat the purpose of complaint systems serving as a tool to conduct stronger higher education oversight.

Another issue with state complaint systems can simply be the number of them available. For example, in New York state there are an overwhelming number of complaint systems a student might consider complaining to: the State Education Department, the Bureau of Proprietary School Supervision, the Professional Education Program Review,<sup>7</sup> the Office of the Attorney General,<sup>8</sup> the New York State Division of Consumer Protection,<sup>9</sup> or the Department of Financial Services.<sup>10</sup> If they live in New York city, a student could also complain to the city's Department of Consumer Affairs.<sup>11</sup> Each of these agencies have slightly different but overlapping jurisdictions over higher education in the state, but without guidance it would be challenging for a student to determine where it would be most appropriate to file a complaint and whether or not a hierarchy exists among them.

Research for this report revealed that this is unfortunately true of many state complaint systems; there are quite a few of them, and often little in the way of direction for students seeking assistance or relief. Because there are many different types and categories of students, and an even wider variety of complaints these students might have, there are a number of different oversight and enforcement agencies with jurisdiction within each state. Further, research into complaint systems suggests that inter-agency collaboration is often done informally, if it is undertaken at all, and if a student incorrectly chooses where to submit their complaint it may not be forwarded to the appropriate agency for resolution.

See Appendix I for a chart detailing the accountability complaint processes in four different states, one selected from each of the four regional higher education compacts.<sup>12</sup> A student seeking to file a complaint in any of these states would not only need to determine the correct agency or agencies to contact, but would also need to navigate the requirements of the system(s) and identify the relevant legal claims to be raised. [See appendix on page 14-15].

## THE UNFORTUNATE REALITY: COMPLAINT SYSTEMS ARE NOT WORKING FOR STUDENTS

Legal aid agencies are nonprofit organizations that provide free legal services to people below a certain income level. As a result, legal aid attorneys serve many clients in vulnerable populations, often in times of crisis. Most people who seek assistance from legal aid have some immediate urgent need, such as a pending lawsuit, wage garnishment, harassing phone calls from debt collectors, or housing issues. It is often through intake screening that underlying higher education and student loan issues worthy of complaint system submission and indicative of system-wide problems are discovered.

To gain perspective on the types of challenges students face and how their experience with complaint systems relates to the validity or severity of their complaint, TICAS interviewed six legal aid attorneys across the country. These attorneys have represented a wide array of clients, and their reflections indicate that complaint systems are failing to serve students' needs on a nationwide scale. We have highlighted several of the common themes identified through these interviews.

### I. Students Do Not Know They Have the Right to File a Complaint

Although consumer complaints are a critical tool in oversight and consumer protection policies and serve as students' primary method for identifying issues and seeking relief, the existing complaints infrastructure was not designed with students in mind. Many students do not realize they have the right to complain, or that there are agencies charged with protecting them and helping them obtain relief when they have been harmed. In many instances, students simply are not aware that they have options unless they are fortunate enough to have legal assistance.

Complaint systems are generally not well publicized, students are rarely encouraged to file complaints, and the value of complaints is generally not made clear to students. Because their perspective is inherently limited to their own experience, students often do not realize that the harm they have suffered may be part of a pattern indicating predatory practices at the institution. Additionally, staffing constraints may render agencies unable to assist students with the complexities of the process, further undermining the efficacy of complaint systems.

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A lot of people just don't think to complain. Especially our clients, they've been disenfranchised for so long that they often don't feel the entitlement to complain.

Persis Yu, Staff Attorney, The National Consumer Law Center

## II. Complaint Systems Are Complex and Difficult to Navigate

Complicated and difficult-to-navigate systems dissuade consumers from filing complaints. "Ease of use is really important," explains Leigh Ferrin, Director of Litigation and Pro Bono at the Public Law Center. "If you have to go through six different databases, fill out six different forms, some in paper, some online, it's so complicated. The simpler the better." Given the complexity, many of the legal aid attorneys we spoke with suggested a more guided system would better serve students. "To the extent that the complaint system can guide the consumer through the process, that is really helpful."

Further complicating this is that there may be many complaint systems within many different agencies, even within the same state. The landscape is crowded with complaint portals hosted by overlapping agencies, and there is little or no guidance to help students navigate the system. "It's not always clear who to complain to," according to Persis Yu, Staff Attorney at National Consumer Law Center. "Even within Massachusetts it's not obvious. The for-profit schools have their own regulatory entity, the Attorney General has a portal to complain, and there are other entities that also accept complaints." Although it is important for each of these entities to have regulatory authority to protect students, the overlap makes this more complicated for students. "It's not readily apparent who to complain to because there's this segmenting, which may make sense from a regulatory perspective, but makes it really confusing from a student or consumer perspective."

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The reality is that students don't complain very often. They just don't know that their rights are being violated until it's very late, and even then they don't know where to go.

Robyn Smith, Senior Attorney at a poverty law organization in Los Angeles

## III. Complaint Systems Are Failing to Meet Student Needs

Students' reticence to file complaints is often reinforced by complaint systems themselves. "I have rarely heard of a student having their issue resolved by filing a complaint," says Claire Torchiana, Equal Justice Works Fellow with Housing and Economic Rights Advocates (HERA). Too often agencies have no process to follow up when a complaint is submitted, and the student receives little or no information in return. Language barriers and lack of access further complicate the process. For systems that do respond to complaints, the process is often limited to sharing the complaint with the company or institution in question and requesting a response.

"The institution responds to the state, and the state sends the response to the complainant. And there is something useful to that process," according to Johnson Tyler, Senior Consumer Attorney at Brooklyn Legal Services. But too often these responses are not reviewed, and problematic responses are not pursued. "It all just goes into a folder, and there it is." Further, students may struggle to identify and locate the types of documents that would be helpful to submit in support of their complaints, and few complaint systems have staff available to assist students. Although many students are harmed by predatory practices, few complaints are ultimately filed, indicating that complaint systems are failing to meet students' needs.

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The schools are very good at addressing why you're stuck with the money, and explaining to people why they have to pay the money or they won't release their transcripts. I don't think they're very useful in terms of actually giving people a break and addressing the problem.

Johnson Tyler, Senior Consumer Attorney, Brooklyn Legal Services

#### IV. Complaint Processes Lack Feedback Loops to Identify and Discourage Patterns of Wrongdoing

In order for complaint systems to serve their consumer protection function, it is not only important that students have the opportunity to complain, but that oversight agencies are proactively investigating complaints and analyzing complaint data. "Complaint systems should be coupled with a high-priority, red-flag monitoring system," says Smith. "When you have a complaint system, you need people to know about it, you need to have forms that are really accessible, you need to have people interview complainants, and the investigators need to have training from law enforcement on how to investigate." These issues become even more concerning in the case of for-profit schools. This sector has a long history of predatory practices, and students at for-profit universities are less likely to graduate and more likely to have significant debt and default on their loans, compared to their traditional 4-year-degree counterparts.<sup>13</sup> Predatory colleges have historically preyed on the poorest students, and for-profit programs disproportionately serve low-income individuals.<sup>14</sup> The most vulnerable students - including veterans, foster youth, students of color, immigrants, first generation students, and single mothers - are often targeted by predatory programs, bear a disproportionate risk, and suffer the consequences.<sup>15</sup> "Given the fight for resources, you want to focus on where the largest abuses occur," stressed Robyn Smith, Senior Attorney at a poverty law organization in Los Angeles.

Proactive monitoring seems to be lacking in many systems, however. Although some agencies, like California's Bureau for Private Postsecondary Education, have statutory requirements to monitor for the indicia of problematic schools – e.g. high cohort default rates, operating too closely to the funding limitations created by the 90/10 rule, or actively under investigation by another agency, and require that complaints be prioritized based on the greatest threat of harm to the greatest number of students<sup>16</sup> – many do not. Several of the legal aid attorneys interviewed indicated that representatives within their states' Attorney General offices had requested that the attorney notify them when they submitted complaints against for-profit schools, because the AG's office had no formal system for monitoring complaints, illustrating the ad hoc manner in which complaint information is shared. Additionally, because there are so many agencies where a student could complain, the data any single agency sees are likely not a complete picture.

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To me, the whole purpose of filing the complaint is to get the agency to do something about it. I not only want justice for my client, but I want action to be taken against the bad actor to make sure it doesn't happen again.

Leigh Ferrin, Director of Litigation and Pro Bono, Public Law Center

#### V. Division and Conflicts Undermine the System

The inefficiencies and challenges in the existing complaint system could potentially be addressed by creating a central complaint database for all students across the country. "Having a national system, where all the complaints go in a database where they're searchable, and law enforcement can search for them – that would be really good," says Smith. Such a system could provide students a simpler, centralized location to submit complaints while simultaneously allowing enforcement and regulatory agencies to monitor complaints for problematic patterns. However, "if students are looking for relief, they want to go to the state. The state is more likely to do something, based on sheer numbers."

The program integrity triad tasks states with the responsibility to protect students from predatory bad actors. As a result, many issues governing higher education are regulated not only by federal law but also by state law, and it is critical that states have access to all complaint data, and that they retain jurisdiction to act on those complaints. Further, allowing institutions to resolve their own complaints with no transparency creates a conflict of interest that inherently undermines

the efficacy of complaint systems as a consumer protection tool. Institutions should only be permitted to resolve certain types of complaints themselves, and in the instance that an institution does address a complaint internally there must be transparent reporting requirements for institutional complaint data.

These tensions, and the need for centrality balanced with the realities of the higher education system with its siloed methods of oversight and regulation, explain why the existing complaint systems are failing students, and also make it clear that something needs to change.

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Complaint systems reflect the way our oversight system is currently structured, and we have to acknowledge certain realities. But the current system isn't serving students well.

Claire Torchiana, Equal Justice Works Fellow, Housing and Economic Rights Advocates (HERA)

## NATIONAL COMPLAINT SYSTEMS

Higher education is no longer constrained by state boundaries in the way it once was. Especially in a time when online education has become so much more commonplace, it is important to think about solutions that serve all students, nationwide. In 2018 nearly 1,300,000 students were enrolled in online programs operated from out-of-state.<sup>17</sup> Although existing federal complaint databases currently focus on complaints related to student loans, rather than those related directly to institutions, examining existing federal complaint systems provides good examples for what a national system could look like.

### 1. Federal Trade Commission Consumer Sentinel

In response to the rise of the internet, and the accompanying surge of fraudulent schemes targeting vulnerable populations, the Federal Trade Commission (FTC) and the National Association of Attorneys General worked to create the Consumer Sentinel complaint system network in 1997.<sup>18</sup> The Sentinel is an online database of complaints from a variety of sources, available to law enforcement officials at the federal, state, and local level, which allows for quick dissemination of complaint data and provides "an easily accessible means of information sharing among law enforcement agencies in the United States and Canada."<sup>19</sup>

Complaints can be submitted to the Sentinel by consumers both online and through a toll-free phone number. In addition to consumers submitting complaints directly, there are numerous other contributors to the Sentinel, including the Consumer Financial Protection Bureau, the Department of Defense, the Department of Veterans Affairs, and the Department of Education. These outside contributions are a unique aspect of the Sentinel system and ensure that consumer complaints collected by various entities are not siloed or held by a single agency, facilitating investigations into wrongdoing at all levels of law enforcement. However, although third parties can contribute complaint information to the system,<sup>20</sup> only approved law enforcement agencies have access to review the full database of complaints.<sup>21</sup> Instead, the FTC periodically publishes complaint information in the aggregate for public review.<sup>22</sup>

### 2. Consumer Financial Protection Bureau Complaint System

Created by the Dodd-Frank Consumer Protection Act of 2010, the Consumer Financial Protection Bureau (CFPB) collects complaints directly from the public about consumer financial products and services.<sup>23</sup> Unlike the FTC's Consumer Sentinel, the CFPB's complaint system can be accessed by the public at large and provides consumers with resolutions to their specific complaints. Consumers can submit their complaints online or over the phone

and can choose to make their complaint publicly accessible. Once a complaint is filed, the CFPB reaches out to the company for a response and offers them an opportunity to confirm a relationship with the complainant. Once the company responds, the complaint is published online; if the company does not respond, the complaint is published after 15 days.<sup>24</sup> If a consumer has opted to share her complaint publicly, the CFPB will publish the consumer's narrative description after having taken steps to remove any personal information.<sup>25</sup>

This level of transparency makes the CFPB's complaint database unique. Such transparency aids the federal government, states, advocates, and consumers alike in tracking national issues related to banking and consumer protection. The CFPB has added new features to aid the public in reviewing complaints within the system, including a national map indicating how many complaints have been submitted by consumers in each state over the last three years.<sup>26</sup> Additionally, the CFPB presents annual reports to Congress on the contents of its complaint database, and partners with other oversight and law enforcement agencies to protect consumers and inform them of their rights.<sup>27</sup>

Every attorney interviewed referenced the CFPB complaint system as an example of a system that served consumers well. With its easy to use submission system, transparent responses and complaint tracking, and public database, the CFPB was cited as an example of a system designed with consumers in mind. "That kind of tracking mechanism is so important, so that it doesn't just go into a black hole," says Ferrin. However, given the importance of state law in the oversight of higher education, an exclusively federal system also has disadvantages.

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For me, the best model is the CFPB. They have had the best complaint model I have ever seen. They post the information online, they really make businesses respond, and take action against businesses that harm folks. They've been able to resolve complaints, and actually get relief to borrowers. Even if they don't take action themselves, they're able to act as a go-between and negotiate relief.

Robyn Smith, Senior Attorney at a poverty law organization in Los Angeles

### 3. Federal Student Aid Complaint System

In 2015, as part of his Student Aid Bill of Rights, President Barack Obama directed federal agencies to work together to create a "state-of-the-art complaint system to ensure quality service and accountability for the Department of Education, its contractors, and colleges."<sup>28</sup> Plans originally called for a system that would allow students to ensure that their complaints were directed to the right party for timely resolution, and that would allow the Department to more quickly respond to issues and strengthen its efforts to protect the integrity of the student financial aid programs. The President specifically directed the Department "to study how other complaints about colleges and universities, such as poor educational quality or misleading claims, should be collected and resolved and to strengthen the process for referring possible violations of laws and regulations to other enforcement agencies."

In a report on the first year of the in-house complaint system (2016-17), the Department's office of Federal Student Aid (FSA) reported that thousands of students submitted complaints about their schools – including complaints about the quality of education received, school closures, or misrepresentations – and that nearly half (47%) of school-related complaints were from students who attended for-profit colleges.<sup>29</sup> However, while it is still possible to submit a school-related complaint in the FSA complaint system, options for doing so are hard to find. Subsequent FSA reports indicate that FSA has scaled back information about the types of school-related complaints submitted by students, including the type of school or the nature of the complaint.<sup>30</sup> Although there have been some positive developments, including efforts to provide additional case management and resolution support to resolve school-related customer complaints and a Memoranda of Understanding (MOU) signed by the CFPB and FSA "to share complaint data from complaints filed by student loan borrowers," the feedback system remains focused on issues related to student loans rather than harm perpetrated by institutions.<sup>31</sup> These changes – both positive and negative – indicate that the FSA feedback system has great potential, but it needs to be substantially strengthened to serve the needs of students.

## THE NATIONAL COUNCIL FOR STATE AUTHORIZATION RECIPROCITY AGREEMENTS (NC-SARA) COMPLAINT SYSTEM

NC-SARA is a privately operated organization which manages a reciprocity agreement governing the oversight of interstate online distance education. NC-SARA was established in 2013, at a time when states had barely begun to grapple with approvals and oversight of online institutions, and the agreement was drafted in an effort to provide structure to the growing online postsecondary education market.<sup>32</sup> Unfortunately, in order to streamline the oversight process for institutions, NC-SARA requires states to forfeit their institutional oversight and regulatory authority over out-of-state institutions, waiving their right to enforce state laws regarding higher education. Although the impetus for the agreement was sound, its specific terms undermine states' authority to protect their own residents in multiple ways, including the proscribed complaint process.

Rather than apply to each state in which they enroll students for authorization, NC-SARA requires institutions to submit an application for membership in the state where it is headquartered (NC-SARA refers to this as the "Home State").<sup>33</sup> Upon approval, the institution is authorized to offer online educational programs in any other NC-SARA member state, and is not required to apply for additional authorization from the states where their students live (NC-SARA refers to these as the "Distant States"). However, NC-SARA also limits states' authority to enforce consumer protection laws that would otherwise safeguard students, meaning that students enrolled at NC-SARA member institutions may not be covered by the higher education-specific protections that would otherwise protect state residents.<sup>34</sup>

In addition to limiting states' rights, students' ability to file complaints is also limited under NC-SARA policies. As discussed above, students are required to follow complaint procedures at their institution before they are allowed to appeal their complaint at the state level, and even then students are only permitted to appeal a complaint in the state where the institution is located, rather than the state where the student lives.<sup>35</sup> Although NC-SARA encourages states to notify one another when a complaint is appealed,<sup>36</sup> such information sharing is not required and the "final resolution of the complaint rests with the SARA Portal Entity in the Home State of the institution."<sup>37</sup>

Very little information is available regarding complaints that are appealed to the NC-SARA Portal Entities,<sup>38</sup> and there is no data available regarding complaints resolved at an institutional level. As a result, it is unclear what the dearth of complaints appealed to NC-SARA Portal Entities says about participating institutions.<sup>39</sup>

## PRINCIPLES FOR COMPLAINT SYSTEMS THAT SERVE HIGHER EDUCATION STUDENTS WELL

Complaint systems must be changed to better serve both students and oversight agencies. The status quo fails to meet the critical consumer protection need, especially for students at predatory institutions, and without substantial improvements it will continue to do so. As online education continues to grow it will become harder to monitor complaints in the siloed system that currently exists. In order to better serve all stakeholders, complaint systems should prioritize the following principles:

- I. Ensure ease of access and user-designed tools.** It is essential that complaint systems are easy to access, and that it is clear where students should go to complain, including at the institutional, state, and federal level. Ideally, there should be a central, well-known complaint portal where students are able to submit their complaints with easy-to-use tools, built utilizing data collection best practices. The system should guide students through the complaint process as simply as possible, without excluding complaints that do not fit the mold, and should provide guidance on the types of information and documentation students should submit. Complaint systems should be available in a wide variety of languages, and options for phone and paper submissions are critical.
- II. Incorporate responsiveness and trackability.** Oversight and regulatory agencies receiving complaints must be sufficiently staffed to respond to those complaints individually, and to not only confirm the receipt of the complaint, but also to follow up and conduct interviews with the complainant. Complaints must be acknowledged when submitted and should ideally be given a tracking number to facilitate monitoring of the complaint's progress. The relevant institution should be required to respond within a reasonable timeframe, the response should be reviewed by agency staff, and staff should elevate the complaint if further action is warranted. If other oversight agencies have jurisdiction over the institution, complaint information should be shared, and a process must be developed to determine which agency will be tasked with resolving the complaint. The student should be notified when their complaint is received, reviewed, when the institution responds, and in the event that the complaint is referred to an alternate agency.
- III. Require proactive monitoring.** It is critical not only that oversight and enforcement agencies address the individual student's concern when a complaint is submitted, but that they utilize complaints data to proactively identify problematic patterns at institutions. Agencies should be monitoring and analyzing complaint data to identify red flags, and take steps to obtain relief for similarly situated students and prevent similar harm to students in the future. Agency staff should be trained in how to conduct investigations and identify legal issues, so that they can help identify issues that students may not have identified previously.
- IV. Facilitate public transparency.** Complaint data should be collected in a central database, with an anonymized public-facing searchable database built with appropriate privacy protections, as well as a backend database with additional information available to law enforcement. In addition to complaints submitted to oversight agencies, institutions should be required to report their own complaint data as well, to ensure that the full picture of complaints data is available. Additionally, while complaints about private and for-profit colleges are typically obscured entirely from public knowledge, this system could ensure they are subject to public records requests.
- V. Mandate independence from institutions.** Students should not be required to file complaints with the institution first. This prohibition on relying on institutional complaint systems was included in the preamble to the 2010 state authorization rule, recognizing that such systems "do not provide the necessary independent process for reviewing a complaint."<sup>40</sup> While complaints submitted to other entities may still require the involvement of the school, an independent agency representative can play a helpful role as a knowledgeable advocate. Students should also be protected from retaliation by institutions once they have submitted complaints.

## RECOMMENDATIONS

There are several concrete steps that can be made to improve the existing complaints system. Below are recommendations for states, the federal government, and for NC-SARA.

### I. State Recommendations

Although states are a critical line of defense for students, the systems in the current complaints landscape are ineffective, inefficient, and undermine consumer protection efforts. With the previously outlined principles in mind, states should revisit their slate of complaint systems with vulnerable students in mind and create centralized complaint portals for students that are accessible by the various oversight and regulatory entities within the state. Additionally, states should share complaint data with other states when appropriate, as well as institutional accreditors and the Department, to ensure that all relevant agencies are provided with the information necessary to protect students.

### II. Federal Recommendations

The Department of Education should immediately take steps to improve complaint systems by issuing guidance to clarify the requirements for state complaint systems in the federal state authorization rule. Through guidance, the Department can clarify:

1. That states must have independent complaint processes for students, and that they cannot rely on or obligate students to go through the institution's complaint process, using the language in the preamble of the 2010 rule as a model.
2. The requirements a state's "process to review...complaints" must satisfy, including requiring each state to designate an entity for receiving student complaints with a user-friendly portal for public submission.<sup>41</sup> The Department should specify that the entity is required to respond to all complaints, either to resolve them within their own jurisdiction, or to forward them to the appropriate agency, including forwarding the complaint to the entity charged with handling complaints in the student's state in the event that the complaint is related to distance education. Additionally, the Department should specify that states are required to share complaint data with relevant agencies in other states for students enrolled in distance education.

Additionally, the opportunity exists to improve the FSA feedback system or create a new federal complaint system that would incorporate the best practices from the CFPB and Consumer Sentinel systems. While FSA does accept complaints against institutions, the current system falls short of the original vision for "a state-of-the-art complaint system to ensure quality service and accountability for the Department of Education, its contractors, and colleges."<sup>42</sup> The Obama Administration had begun planning for a centralized complaint system that could facilitate complaint transparency, ease of access, and address many of the issues in the existing segmented system, providing a "simple and straightforward way to file complaints and provide feedback about federal student loan lenders, servicers, collections agencies, and institutions of higher education." Although there have been some positive steps, the Department should consider revisiting this opportunity and ensuring that the FSA feedback system is strengthened to better serve students' needs.

### III. NC-SARA Recommendations

As an interstate reciprocity agreement, complaints should serve an especially important role in NC-SARA. By joining NC-SARA, states give up their institutional approval and oversight authority, trusting that the state where the institution is located will verify and regulate the rigor and financial security of the institutions enrolling their residents. In such a situation, student complaints become the primary tool for states to identify trends at out-of-state institutions and are a key method for states to identify problematic institutions for further investigation.

NC-SARA must take steps to improve its complaint system, by redesigning it to be more transparent, collaborative, independent, and accessible. Students must be free to file complaints directly to the Portal Entity, all relevant states must work collaboratively to investigate and resolve complaints, and complaint data must be collected and transparent at every level. Further, because mandatory arbitration clauses limit harmed students' ability to seek financial or other recourse, we recommend that NC-SARA prohibit institutions from including mandatory arbitration clauses in their enrollment contracts as it is uniquely positioned to do.<sup>43</sup>



**APPENDIX I**  
**TICAS.ORG/COMPLAINTSAPPENDIX**

| State         | Complaint Systems<br>(NC-SARA Portal Entity<br>Highlighted in Green)  | Jurisdiction   | Submission Options                                 | Independence from Institutions   | Publicly Transparent Data  | Student Outreach and Confirmation   |
|---------------|---|--|--|--|--|---|
| Arizona       | <a href="#">Arizona State Board for Private Postsecondary Education (SBPPE)</a>   | Responsible for investigating student complaints against the educational institutions it licenses.   | Email or by mail                                   | Students are required to exhaust institutional complaint options first.                  | Complaint data is not readily available to the public, other than the limited information posted on the NC-SARA website. | The SBPPE staff investigate student complaints and may refer them to the Board's Complaint Committee for initial consideration at a public Complaint Committee Meeting. If referred for consideration, complainant and the institution receive written notice of the date, time and place at which the complaint will be considered by the Complaint Committee.   |
|               | <a href="#">Arizona Board of Regents (ABOR)</a>   | Dedicated to helping to resolve issues or problems related to public institutions.   | Online, by email, or by phone                      | Students are required to exhaust institutional complaint options first.                  | Complaint data is not made readily available to the public.  | ABOR responds to constituent communications.  |
|               | <a href="#">Arizona SARA Council</a>  | Responsible for oversight of NC-SARA-approved institutions in relation to non-instructional complaints.  | Online and by mail                                 | Students are required to exhaust institutional complaint options first.                  | Complaint data is not made readily available to the public.  | Once a complaint is received by the Arizona SARA Council, the Council will determine jurisdiction of the complaint. If the complaint falls within the jurisdiction of the Arizona SARA Council, the Council will review the information provided and determine if further investigation and follow-up are necessary.  |
|               | <a href="#">Arizona Consumer Information and Complaints (CIC) Office</a>  | Enforces the Arizona Consumer Fraud Act and other state and federal consumer protection laws. CIC investigates complaints involving deceptive or unfair practices which occur in connection with the sale or advertisement of goods or services.   | Online, by fax, and by mail                        | Students may submit complaints directly to the agency, independent of their institution. | Complaint data is not made readily available to the public.  | Once the complaint is received, CIC will send a letter of acknowledgement with the status of the complaint.   |
|               | <a href="#">Arizona Department of Financial Institutions (AZDFI)</a>  | Regulates and accepts complaints about a wide variety of financial institutions.   | Online, by fax, and by mail                        | Students may submit complaints directly to the agency, independent of their institution. | Complaint data is not made readily available to the public.  | Upon receipt of the complaint the information is entered into AZDFI's database, assigned a case number, and then assigned to a Consumer Affairs examiner. The examiner will send a confirmation letter including their name, contact information, and the complaint case number. The Department will try to mediate a fair and equitable resolution, generally within 30-40 business days. The student will receive a letter documenting the conclusions, and actions regarding the complaint.  |
| Louisiana     | <a href="#">Louisiana Board of Regents (BOR)</a>  | Coordinating agency for all public higher education in Louisiana, and also oversees proprietary schools. BOR is not a regulatory agency, however, and therefore has limited jurisdiction over student complaints.  | By mail, first to the institution, then to the BOR | Students are required to exhaust institutional complaint options first.                  | Complaint data is not readily available to the public, other than the limited information posted on the NC-SARA website. | "For complaints against proprietary schools, the BOR sends a letter to the school director, enclosing a copy of the student's letter, requesting that the director communicate with the student, either in person or in writing, within ten days. The student is copied on this letter. Students at public colleges may submit a written complaint to the BOR if a solution cannot be reached with the school director or system office. For NC-SARA complaints, the BOR must review the materials and contact student for any follow-up inquiries, send a copy of the complaint to the institution, and forward its response to the student within 30 days. Within the next 30 days, the BOR must inform both parties of its final disposition." |
|               | <a href="#">Louisiana Office of Financial Institutions (OFI)</a>  | Responsible for the supervision of various entities which provide financial services to the citizens of the State of Louisiana. OFI accepts consumer complaints.   | Email, fax, and by mail                            | Students may submit complaints directly to the agency, independent of their institution. | Complaint data is not made readily available to the public.  | "OFI may send a copy of the complaint, together with supporting documents, to the company or any affiliate or related entity against which the complaint is filed and other private or public agencies."  |
|               | <a href="#">Consumer Protection Section (CPS) within the Louisiana Attorney General's Office</a>  | Accepts complaints from consumers about unfair practices and offers a voluntary mediation process to consumers and businesses to improve communication between the parties and assist in resolving disputes.   | Online and by mail                                 | Students may submit complaints directly to the agency, independent of their institution. | Complaint data is not made readily available to the public.  | CPS may forward a copy of the complaint the company complained about and ask for a response, or may refer the dispute to another agency. After reviewing the company's response, the CPS will send a copy of it to the complainant.   |
| Massachusetts | <a href="#">Massachusetts Department of Higher Education (DHE)</a>  | Responsible for and managing the complaint process for public and private independent institutions of higher education located in the state.   | Online, by fax, and by mail                        | Students are required to exhaust institutional complaint options first.                  | Complaint data is not readily available to the public, other than the limited information posted on the NC-SARA website. | DHE reviews submitted complaints and documentation, and reaches out to students, if needed to clarify.  |
|               | <a href="#">Massachusetts Division of Professional Licensure (DPL) within the Office of Consumer Affairs and Business Regulation</a>                  | Responsible for managing the complaints against tradesworkers, businesses, and proprietary schools in the state.   | Online and by mail                                 | Students may submit complaints directly to DPL, independent of their institution.        | Complaint data is not made readily available to the public.  | Individuals may submit an application for a complaint. If a complaint is issued based on the application, the complainant will be notified in writing. If a complaint is not issued, the complainant will receive an explanation in writing, and information on additional resources that may be available, if such exist.  |
|               | <a href="#">Massachusetts Consumer Advocacy and Response Division (CARD) within the Attorney General's Office</a>                                     | Accepts consumer complaints, and the Student Loan Assistance Unit can also accept help requests for students with issues related to student loans and servicers.   | Online, by phone, by mail, or in person            | Students may submit complaints directly to CARD, independent of their institution.       | <a href="#">Anonymized complaint data is available online, as well as for download.</a>                                  | Individuals may submit complaints and wait for a response, or may reach out directly to the Attorney General's Consumer Hotline with questions.   |
| Michigan      | <a href="#">Michigan Post-Secondary Schools (PSS) unit within the Department of Labor and Economic Opportunity, Office of Employment and Training</a> | Responsible for responding to formal complaints against authorized public, independent non-profit and proprietary institutions of higher education providing distance education from Michigan or out-of-state institutions of higher education providing distance education in Michigan. The office is the designated NC-SARA State Portal Entity. | By mail  | Students are required to exhaust institutional complaint options first.                  | Complaint data is not readily available to the public, other than the limited information posted on the NC-SARA website. | PSS reviews submitted documentation to determine if the agency has authority to investigate, and reaches out to students, if needed to clarify submitted documentation.   |
|               | <a href="#">Michigan Attorney General's Office (AGO)</a>  | The Consumer Protection, Child Support, and Health Care Fraud Divisions of the AGO mediate consumer complaints.  | Online, by fax, and by mail                        | Students may submit complaints directly to the AGO, independent of their institution.    | Complaint data is not made readily available to the public.  | Informal mediation process, including confirmation and tracking number provided to student. When the business or individual being complained against does not cooperate/respond to the complaint, the AGO will confirm with the student in writing.   |

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